IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.251 Of 2000.

Date of decision: July 20th, 2007.

State of Himachal Pradesh. ..... Appellant.

Vs.

Sarwan Kumar and Others. ..... Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr. V.K.Verma, Addl. Advocate General.

For the respondents: Mr. N.K.Thakur, Advocate, for respondents No.1 to 3.

Mr. Ajay Sharma, Advocate, for respondent No.4.

Surinder Singh, J (oral):

In the instant appeal, the judgment of acquittal passed by the Additional Chief Judicial Magistrate in case No.106-I-96, RBT-24-II-1998, decided on 24.9.1999 has been assailed.

In brief, the facts of the case are that during the intervening night of 21st/22nd June, 1996, at about 2.45 AM at village Gagret, a Jeep No.HP-22-2410, being driven by respondent Sarwan Kumar was coming from the other side. On seeing the police party, headed by ASI Harnam Singh, who were on special checking at police Barrier, Gagret, respondent Sarwan kumar, driver tried to reverse the Jeep, the police became suspicious, stopped it and found respondents No.2

Whether reporters of local Papers may be allowed to see the judgment? Yes.

and 3 sitting therein and on checking they recovered 21 resin tins, from the back portion of the Jeep. According to the case of the prosecution, respondents failed to produce the permit, thus, a rukka for registration of a case was sent to the police station, on the basis of which formal FIR was registered under Sections 41 and 42 of the Indian Forest Act, Section 4 of the Himachal Pradesh Resin and Resin Products (Regulation of Trade) Act, 1981, (in short the 1981 Act) as well as under Section 379 read with Section 120-B of the Indian Penal Code. Though respondent No.4 Sat Pal was not involved in transportation of the resin tins, however, it is alleged that he was an authorised Contractor has conspired with other respondents for its transportation.

After completing the challan, it was presented in the court for trial. Charge-sheet was put to the respondents under the aforesaid sections. They pleaded not guilty and claimed trial.

To prove the case, prosecution examined eight witnesses, out of whom PW3 Sat Pal and PW4 Joginder Singh did not support the case of the prosecution. The respondents were examined under Section 313 Cr.P.C. They denied the attendant circumstances put to them. The respondent No.4 imputed the allegations of false implication on account of lodging the complaint against the police. It was alleged that the police officials were invariably demanding their Jeep for their personal use, for which they had refused and on account of this the respondents alleged the false implication. However, no defence evidence was led.

At the conclusion of the trial on appreciating the evidence of the prosecution, the learned trial court found that respondent No.4 Sat Pal was issued permits Ext.DW5/A and Ext.DW5/B by the forest departments for extraction of resin near the area from where the alleged tins were allegedly lifted for being transported in the said vehicle. Neither the theft nor the conspiracy as alleged was proved. The independent witnesses did not support the case of the prosecution. The star witness PW7, who was the member of the raiding party had contradicted the prosecution version in his cross-examination in material particulars. The learned trial court also held that the cognizance of the said case was barred under Section 16 of the 1981 Act in absence of proper authorization to file the complaint. Thus, while placing its reliance on **State of H.P**. v. **Sultan Mohammad [1998(1) CLJ (HP) 262]**, the respondents were acquitted.

Against the impugned judgment of acquittal, the instant appeal has been filed. The leave to appeal was granted on 10.5.2000 and now the matter has been final heard.

Mr. V.K. Verma, learned Additional Advocate General, for the appellant has vehemently argued that once it has been proved that the respondents were transporting the resin without any valid permit, the trial court ought to have convicted the accused under Section 41 and 42 of the Indian Forest Act. Since it was not done, therefore, the impugned judgment is unsustainable.

On the other hand, Mr. N.K. Thakur, learned counsel for the respondents has supported the judgment and submitted

that there was no error committed by the trial court, while conducting the said case, and it is based on the sound reasoning.

I have given by thoughtful consideration to the rival contentions of the parties and examined the evidence on record.

On reappraising the evidence, I have found that the conclusion arrived at by the learned trial court is born out from the record. Evidence regarding the recovery of the resin is discrepant and on the top of it, the transportation of resin is governed under the "1981 Act".

Section 4 of the Act says as under:-

"4. On and after the commencement of this Act,-

[Restrictions on sale, and purchase of resin etc.]

(a) no person shall tap resin or manufacture any resin product or export any resin or resin products, unless he is registered under and in accordance with Section 10;

(b) no person shall sell resin to any person other than the State Government or an authorised officer;

(c) no person other than the State Government or authorised officer shall purchase resin from any tapper/owner of resin;

(d) no person other than the State Government or an authorised officer shall transport resin except in the following cases:-

(i) where he being a tapper of resin transports it to the resin depot specified for the area where the resin is tapped; or

(ii) where he transports it on behalf of the State Government or an authorised officer;

(e) no person other than the State Government or an authorised officer shall transport

resin products manufactured in a unit to any place outside that unit without a permit issued in that behalf by such authority, in such manner and subject to such terms and conditions as may be prescribed."

Section 2(e) defines the "resin products", which includes resin. The breach of the above section is punishable under Section 14 of the Act ibid, which provides for the penalty and Section 16 thereof prohibits the cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a Forest Officer not below the rank of a Forest Ranger or by such other officer as may be empowered by general or special order of the State Government in that behalf.

In the present case, admittedly no complaint in writing has been made to the court by the concerned public servant as per the provisions of Section 16 of the 1981 Act. Though the trial court took the cognizance, on the basis of police report submitted under Section 173 of the Code of Criminal Procedure, but such cognizance under the "1981 Act" aforesaid was bad and the entire trial of the respondents stood vitiated including Sections 41 and 42 of the Indian Forest Act. The 1981 Act above specifically deals with transportation etc. of the Resin and provides the penalty for any breach committed thereunder. The transportation of forest product is also covered under Sections 41 and 42 of the Indian Forest Act. The alleged offences are committed in the course of same transaction and a composite challan, in the court aforesaid was filed under the Indian Penal Code and the " 1981 Act" by the police under Section 173

of the Code of Criminal Procedure, such a challan cannot be split up, therefore, when the trial court cannot take the cognizance under Section 16 of the Act, then it cannot be said that the respondents could have been convicted only under general provisions of 41 and 42 of the Indian Forest Act, ignoring the provisions of "1981 Act."

There is nothing on record to show that the challan could have been presented by the Inspector S.H.O. under the "1981 Act". In **State of H.P**. v. **Sultan Mohamad** aforesaid, it was held by this court that the prosecution of the accused was not maintainable in absence of special or general notification to launch prosecution by the police under the Act in such a case.

Therefore, the view taken by the learned trial court for acquitting the accused is born out from the record. Thus, the acquittal of the respondents cannot be interfered with. Accordingly, the impugned judgment is upheld and the appeal is dismissed.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

July 20th, 2007. **(Surinder Singh)**
(PDS) **Judge**.